

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JONATAN BARAHONA and HECTOR HERNANDEZ,

Plaintiffs,

Civil Action No.: 2:21-cv-05400
(GRB)(AYS)

-against-

VERIFIED ANSWER

PARADISE TREE SERVICE & LANDSCAPE, CORP.
and WILLIAM NIETO,

Defendants.

-----X
C O U N S E L O R S :

The Defendants, PARADISE TREE SERVICE & LANDSCAPE CORP. s/h/a PARADISE TREE SERVICE & LANDSCAPE, CORP. and WILLIAM NIETO, by and through their attorney, THE LAW OFFICE OF GLENN J. INGOGLIA, do hereby answer the Plaintiffs', JONATAN BARAHONA and HECTOR HERNANDEZ's, Complaint, upon information and belief, as follows:

1. Denies those allegations contained in the paragraphs of the Complaint, including any sub-paragraphs contained therein and designated "1," "2," "3," "6," "8," "10," "11," "12," "13," "14," "18," "19," "20," "21," "22," "23," "24," "25," "26," "28," "29," "30," "31," "32," "33," "34," "35," "36," "37," "38," "39," "41," "42," "43," "44," "45," "46," "47," "48," "49," "50," "51," "52," "53," "54," "55," "56," "57," "58," "59," "60," "61," "62," "63," "64," "65," "66," "67," "68," "69," "70" and all paragraphs and subparagraphs contained in the "WHEREFORE" or Ad Damnum Clause, including all prayers for relief.

2. Denies knowledge or information necessary to form a belief in the paragraphs of the Complaint therein designated "4," "5" and "7".

3. Denies in the form alleged those allegations contained in the Complaint and therein designated “27” and “40”.

4. Defendants consent to Plaintiffs’ Jury Demand and do hereby admit the allegations contained in the paragraphs of the Complaint therein and designated “9,” “15,” “16” and “17”.

FIRST AFFIRMATIVE DEFENSE

The Defendant, Paradise Tree Service & Landscape Corp., pursuant to FLSA is involved in the Construction Industry and is not subject to FLSA’s recordkeeping, wage, overtime wage and other requirements, because at no time during the relevant periods did Defendant have two or more employees and have an annual gross sales volume of \$500,000.00 or more or perform duties closely related and directly essential to interstate activities.

SECOND AFFIRMATIVE DEFENSE

The Defendant, William Nieto, is a natural person and shareholder, manager, officer of Defendant, Paradise Tree Service & Landscape Corp., and not a business or employer and therefore not subject to FLSA’s requirements.

THIRD AFFIRMATIVE DEFENSE

This action should be dismissed as against Defendant, William Nieto. The Plaintiffs may not “pierce the corporate veil” protecting the Defendant, William Nieto, as he is a natural person, shareholder, director and officer of the Corporate Defendant, Paradise Tree Service & Landscape Corp., and not subject to any personal liability allegedly caused by the Corporate

Defendant, pursuant to State and/or Federal Laws.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Defendants upon which relief can be granted, in that, Plaintiff fails to allege in his Complaint with specificity which provisions the Defendants violated of the following statutes:

- a) Fair Labor Standards Act of 1938 (FLSA) as amended, 29 U.S.C. § 207;
- b) New York Labor Law (NYLL), Article 19, §§ 650 et seq.;
- c) New York State Codes, Rules and Regulations, 12 NYCRR § 142-2.2;
- d) NYLL § 663 and 12 NYCRR § 142-2.1 (Unpaid Minimum Wages);
- e) NYLL § 663 and 12 NYCRR § 142-2.4 (Unpaid spread of hours pay);
- f) NYLL § 195(3) (Statutory damages for wage statement violations); and
- g) NYLL § 195(1) (Statutory damages for wage notice violations).

FIFTH AFFIRMATIVE DEFENSE

The Plaintiffs were not employees of the Defendants and therefore cannot recover damages pursuant to State and/or Federal Laws.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred to the extent that they were not filed within the applicable statutes of limitation and/or administrative filing periods.

SEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims are barred, in whole or in part, by the principles of waiver and/or estoppel.

EIGHTH AFFIRMATIVE DEFENSE

The claims are barred to the extent that Plaintiffs failed to timely and properly exhaust all necessary administrative, statutory and/or jurisdictional prerequisites for the commencement of this action.

NINTH AFFIRMATIVE DEFENSE

The Defendants did not engage in commerce or in the production of goods for commerce, or employ Plaintiffs in an enterprise engaged in commerce or in the production of goods for commerce, and therefore, not liable to the Plaintiff for any damages alleged pursuant to 29 U.S.C. §§ 201, 207, 216.

TENTH AFFIRMATIVE DEFENSE

A defense is founded upon documentary evidence in possession of the Defendants and/or the Plaintiffs.

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims should be dismissed by this Court for lack of subject matter and/or personal jurisdiction, because the Defendants are not subject to FLSA requirements as defined by FLSA.

TWELFTH AFFIRMATIVE DEFENSE

The Plaintiffs' claims against the Defendants should be dismissed immediately in order to avoid the possibility of duplicative awards and a windfall to the Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

The court should not proceed in the absence of person(s) who should be named as a party or parties.

FOURTEENTH AFFIRMATIVE DEFENSE

Any damages allegedly sustained by the Plaintiffs, were due in whole or in part, to the conduct, actions or inactions of the Plaintiffs and/or persons/entities not a party to this lawsuit.

FIFTEENTH AFFIRMATIVE DEFENSE

The Defendants complied with all State and/or Federal Laws which the Plaintiffs allege the Defendants violated.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendants should be dismissed because there was insufficient service of process on the Defendants.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claims should be dismissed because this Court is an improper venue because neither Defendant is subject to FLSA requirements or any other Federal Statute.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs claims should be dismissed because Defendants paid Plaintiffs all wages, they claim they are owed.

PRAYER

Defendants respectfully request the Court enter a judgment dismissing Plaintiffs' claims as against Defendants, with prejudice, assess costs against Plaintiffs, and award Defendants all other relief to which they are entitled.

Dated: Island Park, New York
November 9, 2021

Yours, etc.,

THE LAW OFFICE OF GLENN J. INGOGLIA

By: *Glenn Ingoglia*
GLENN J. INGOGLIA, ESQ. (GI 1655)
Attorney for Defendants
PARADISE TREE SERVICE & LANDSCAPE
CORP. and WILLIAM NIETO
104 Long Beach Road
Island Park, New York 11558
(516) 432-0500 Telephone
(516) 432-7333 Facsimile
glenn@ingogliafirm.com Electronic Mail

TO:
Steven J. Moser, Esq.
Moser Law Firm, P.C.
5 E. Main Street
Huntington, New York 11743
(516) 671-1150
steven.moser@moserlawfirm.com

VERIFICATION

STATE OF NEW YORK}

ss.:

COUNTY OF NASSAU}

WILLIAM NIETO, being duly sworn, deposes and says:

I am a party to this action and am over the age of eighteen years old. I have read the foregoing Answer and know the contents thereof; and the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

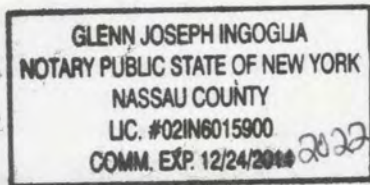
William Nieto

WILLIAM NIETO

Sworn to and Subscribed before me this
9th Day of November, 2021

Glenn Ingoglia

Notary Public



VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

[x] Corporation Verification

WILLIAM NIETO, being duly sworn, deposes and says:

I am the President of PARADISE TREE SERVICE & LANDSCAPE CORP., defendant in this action. I have read the within answer and know its contents; it is true to the best of my knowledge, except as to the matters stated to be alleged upon information and belief, and as to those matter I believe them to be true. The grounds of my belief as to all matters not stated upon my knowledge are documents underlying the transactions that are the subject matter of this action. I make this verification because defendant, PARADISE TREE SERVICE & LANDSCAPE CORP., is a corporation.

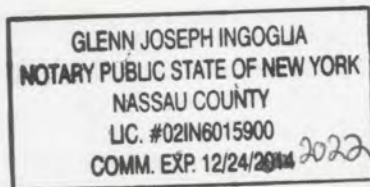
William Nieto

WILLIAM NIETO
President
PARADISE TREE SERVICE &
LANDSCAPE CORP

Sworn to and Subscribed before me this
9th day of November, 2021

Glenn Ingoglia

Notary Public



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

| | |
|--|-----------------------------------|
| -----X | |
| JONATAN BARAHONA and HECTOR HERNANDEZ, | § |
| | § |
| Plaintiffs, | § Civil Action No.: 2:21-cv-05400 |
| | § (GRB)(AYS) |
| -against- | § |
| | § |
| | § |
| PARADISE TREE SERVICE & LANDSCAPE, CORP. | § |
| and WILLIAM NIETO | § |
| | § |
| | § |
| Defendants. | § |
| -----X | |

Pursuant to Federal Rule of Civil Procedure 7.1 and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for PARADISE TREE SERVICE & LANDSCAPE CORP. (a private non-governmental party) certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held: NONE.

Dated: Island Park, New York
November 9, 2021

Yours, etc.,

THE LAW OFFICE OF GLENN J. INGOGLIA

Glenn Ingoglia

By:

GLENN J. INGOGLIA, ESQ. (GI 1655)
Attorney for Defendants
PARADISE TREE SERVICE & LANDSCAPE
CORP. and WILLIAM NIETO
104 Long Beach Road
Island Park, New York 11558
(516) 432-0500
(516) 432-7333 Facsimile
glenn@ingogliafirm.com Electronic Mail

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
JONATAN BARAHONA and HECTOR HERNANDEZ, §
§
Plaintiffs, § Civil Action No.: 2:21-cv-05400
§ (GRB)(AYS)
§
-against- §
§ AFFIRMATION OF SERVICE
§
PARADISE TREE SERVICE & LANDSCAPE, CORP. §
and WILLIAM NIETO §
§
§
Defendants. §
-----X

I, GLENN J. INGOGLIA, ESQ., declare under the penalty of perjury, on November 10, 2021, I have served a copy of the attached VERIFIED ANSWER and RULE 7.1 STATEMENT upon the following parties/offices at the indicated address(es), by Certified U.S. Mail – Return Receipt Requested and Regular Mail:

Steven J. Moser, Esq.
Moser Law Firm, P.C.
5 E. Main Street
Huntington, New York 11743
(516) 671-1150
steven.moser@moserlawfirm.com

Dated: Island Park, New York
November 10, 2021

THE LAW OFFICE OF GLENN J. INGOGLIA

By: Glenn Ingoglia
GLENN J. INGOGLIA, ESQ. (GI 1655)
Attorney for Defendants
PARADISE TREE SERVICE & LANDSCAPE
CORP. and WILLIAM NIETO
104 Long Beach Road
Island Park, New York 11558
(516) 432-0500
(516) 432-7333 Facsimile
glenn@ingogliafirm.com Electronic Mail

THE LAW OFFICE OF GLENN J. INGOGLIA
104 Long Beach Road
ISLAND PARK, NEW YORK 11558
(516) 432-0500

Civil Action No.: 2:21-cv-05400 (GRB)(AYS)
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JONATAN BARAHONA and HECTOR HERNANDEZ,

Plaintiffs,

-against-

PARADISE TREE SERVICE & LANDSCAPE, CORP.
and WILLIAM NIETO,

Defendants.

VERIFIED ANSWER

Signature (F.R.C.P. Rule 11)

Glenn Ingoglia

Print name beneath

Glenn J. Ingoglia, Esq.
THE LAW OFFICE OF GLENN J. INGOGLIA
Attorney for Defendants
PARADISE TREE SERVICE & LANDSCAPE, CORP.
and WILLIAM NIETO
Office and Post Office Address, Telephone
104 Long Beach Road
ISLAND PARK, NEW YORK 11558
Phone: (516) 432-0500
Fax: (516) 432-7333
glenn@ingoglia.com

TO: Steven J. Moser, Esq.
Moser Law Firm, P.C.
Attorney for Plaintiffs
5 E. Main Street
Huntington, New York 11743
(516) 671-1150
steven.moser@moserlawfirm.com